



STATE OF NEW YORK
DEPARTMENT OF STATE
COMMITTEE ON OPEN GOVERNMENT

FOIL-RP-10697

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March 19, 1998

Executive Director

Robert J. Freeman

Mr. Ray Shanley
Executive Director
Utica Community Action, Inc.
253 Genesee Street
Utica, NY 13501

Dear Mr. Shanley:

I have received a letter dated March 4 from Matt Leingang of the Utica Observer-Dispatch in which he asked that I write to you for the purpose of "explaining directly to the anti-poverty agency why it should follow the spirit of the Freedom of Information Law." He indicated that Utica Community Action, Inc. has repeatedly denied requests to review financial information, particularly records reflective of travel expenses incurred by yourself and other employees. Mr. Leingang included materials that you prepared indicating that your agency "will not permit the Observer-Dispatch access to its records..."

Mr. Leingang indicated that he shared a copy of an advisory opinion prepared in 1996 concerning the status of a different community action agency under the Freedom of Information Law. Although you may be familiar with that opinion, I will reiterate several of the points offered therein.

From my perspective, it is not entirely clear that a community action agency is subject to the requirements of the Freedom of Information Law. Nevertheless, it is clear in my view that a community action agency has an obligation to provide information to the public.

By way of background, the New York Freedom of Information Law pertains to agency records, and §86(3) of that statute defines the term "agency" to mean:

"any state or municipal department, board, bureau, division, commission, committee, public authority, public corporation, council, office of other governmental entity performing a governmental or proprietary function for the state or any one or more municipalities thereof, except the judiciary or the state legislature."

As such, the Freedom of Information Law generally applies to records maintained by entities of state and local government. It is my understanding that community action agencies are not-for-profit corporations. Although it appears that they perform a governmental function, it is questionable whether they constitute "governmental entities" or, therefore, are agencies subject to the Freedom of Information Law.

It is my understanding, however, that community action agencies have been created by means of the authority conferred by the Economic Opportunity Act of 1964. According to §201 of the Act, the general purposes of a community action agency are:

"to stimulate a better focusing of all available local, State, private and Federal resources upon the goal of enabling low-income families, and low-income individuals of all ages, in rural and urban areas to attain the skills, knowledge, and motivations and secure the opportunities needed for them to become fully self-sufficient..." [§201(a)]

"to provide for basic education, health care, vocational training, and employment opportunities in rural America to enable the poor living in rural areas to remain in such areas and become self-sufficient therein..." [§201(b)].

When community action agencies are designated, §211 indicates that they perform a governmental function for the state or for one or more public corporations. It is noted that a public corporation includes a county, city, town, village, or school district, for example. As such, by means of the designation as community action agencies, those agencies apparently perform their duties for the state or at least one public corporation.

Perhaps most importantly, §213 of the enabling legislation expresses an intent to enhance public participation as well as disclosure of information regarding the functions and duties of community action agencies. Specifically, subdivision (a) of §213 states in relevant part that:

"[E]ach community action agency shall establish or adopt rules to carry out this section, which shall include rules to assure full staff accountability in matters governed by law, regulations, or agency policy. Each community action agency shall also provide for reasonable public access to information, including but not limited to public hearings at the request of appropriate community groups and reasonable public access to books and records of the agency or other agencies engaged in program activities or operations involving the use of authority or funds for which it is responsible..."

Again, while it is unclear that the Freedom of Information Law applies to records maintained by a community action agency, I believe that the federal legislation quoted above expresses an intent to ensure accountability to the public by providing "reasonable public access to books and records of the agency."

Whether the Freedom of Information Law applies or otherwise, I believe that it offers guidance concerning the disclosure.

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That statute, in brief, is based upon a presumption of access. Stated differently, all records of an agency are available, except to the extent that records or portions thereof fall within one or more grounds for denial appearing in section 87(2)(a) through (i) of the Law. It is noted that the introductory language of §87(2) refers to the authority to withhold "records or portions thereof" that fall within the scope of the grounds for denial that follow. The phrase quoted in the preceding sentence in my opinion indicates that a single record might be accessible or deniable in whole or in part.

Insofar as records of a community agency include the names, addresses or other identifying details pertaining to those receiving assistance based on an income eligibility requirement, I believe that those items may be withheld or deleted, as the case may be (see e.g., Tri-State Publishing Co. v. City of Port Jervis, Community Development Agency, Supreme Court, Orange County, March 4, 1992). Those kinds of details pertaining to participants in your programs would if disclosed constitute "an unwarranted invasion of personal privacy" [see Freedom of Information Law, §87(2)(b)].

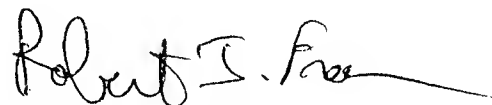
On the other hand, the provision of federal law cited earlier specifically refers to "books" of an agency, and I believe that the reference to "books" is intended to mean books of accounts and similar records that detail the manner in which a community action agency expends money. If money is spent in the performance of one's duties, that kind of information in my opinion would unquestionably be public. Disclosure of that information would enhance the accountability of an agency to the public and serve as a means of meeting the goals of the legislation cited earlier.

Lastly, the materials sent by Mr. Leingang suggest that you have chosen to disclose to some but not to others. In this regard, as a general principle, the Freedom of Information Law does not distinguish among applicants for records. Stated differently, when records are accessible, they must be made equally available to any person, notwithstanding one's status or interest [see M. Farbman & Sons v. NYC Health and Hosps. Corp., 62 NY 2d 75 (1984) and Burke v. Yudelson, 368 NYS 2d 779, aff'd 51 AD 2d 673, 378 NYS 2d 165 (1976)].

In sum, based on the direction provided in federal law governing the activities of community action agencies, I believe that the Utica Community Action, Inc. is obliged to disclose in a manner that guarantees accountability to the public.

If you would like to discuss the matter or if I can be of assistance, please feel free to contact me.

Sincerely,



Robert J. Freeman
Executive Director

RJF:jm

cc: Matt Leingang